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Attorney for Plaintiff

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

|                                   |   |                                  |
|-----------------------------------|---|----------------------------------|
| TONYA HALE,                       | ) | CASE NO.                         |
|                                   | ) |                                  |
|                                   | ) | COMPLAINT FOR DAMAGES AND OTHER  |
| Plaintiff,                        | ) | RELIEF BASED UPON:               |
|                                   | ) |                                  |
| vs.                               | ) | 1. SEX/GENDER HARASSMENT         |
|                                   | ) | 2. HOSTILE ENVIRONMENT SEXUAL    |
|                                   | ) | HARASSMENT                       |
| THE COSMOPOLITAN OF LAS VEGAS;    | ) | 3. RETALIATION                   |
| NV PROPERTY 1, LLC dba THE        | ) | 4. NEGLIGENT HIRING, SUPERVISION |
| COSMOPOLITAN OF LAS VEGAS, a      | ) | AND RETENTION                    |
| Nevada Limited Liability Company; | ) | 5. VERBAL ASSAULT                |
| RICHARD SHERMAN, an individual,   | ) | 6. INTENTIONAL INFLICTION OF     |
|                                   | ) | EMOTIONAL DISTRESS               |
|                                   | ) |                                  |
| Defendants.                       | ) | JURY DEMAND                      |
|                                   | ) |                                  |
|                                   | ) |                                  |
|                                   | ) |                                  |
|                                   | ) |                                  |
|                                   | ) |                                  |
|                                   | ) |                                  |

Plaintiff TONYA HALE ("Plaintiff" or "Hale") alleges as follows:

**JURISDICTION AND VENUE**

1. This action is brought pursuant to the provisions of Title VII of the Civil Rights Act of 1964, 42 USC §2000e, et seq. (hereinafter "Title VII") to obtain relief for Plaintiff Hale for discriminating against her, harassing her and retaliating against her, on the basis of her sex

1 (female) in the terms, conditions or privileges of her employment.

2 2. At all relevant times, Defendants THE COSMOPOLITAN OF LAS VEGAS; NV  
3 PROPERTY 1, LLC dba THE COSMOPOLITAN OF LAS VEGAS, a Nevada Limited Liability  
4 Company (hereinafter "Cosmopolitan" or "Defendant Cosmopolitan") employed more than fifteen  
5 (15) employees, and they are therefore subject to the provisions of Title VII.

6 3. Jurisdiction is predicated under these code sections as well as 28 USC §1331, as  
7 this action involves a federal question. The state law claims for verbal assault and intentional  
8 infliction of emotional distress are predicated on the supplemental jurisdiction of the court  
9 pursuant to 28 USC §1367(a).

10 4. The events or omissions giving rise to Plaintiff's claim occurred in this judicial  
11 district, thus venue is proper here pursuant to 28 USC §1391(b)(2), and the ends of justice so  
12 require.

### 13 **PARTIES**

14 5. Plaintiff, Hale is a citizen of the United States and a resident of the State of  
15 Nevada, County of Clark and City of Las Vegas.

16 6. Plaintiff is informed and believes and thereon alleges that at all relevant times  
17 giving rise to the claims asserted, Plaintiff was employed in Las Vegas, Nevada by Defendant  
18 Cosmopolitan.

19 7. Cosmopolitan is an employer within the meaning of 42 USC §2000e(b).

20 8. Plaintiff is informed and believes and thereon alleges that Defendant RICHARD  
21 SHERMAN, an individual (hereinafter "Sherman" or "Defendant Sherman") is a citizen of the  
22 United States and a resident of the State of California.

### 23 **EXHAUSTION OF REMEDIES**

24 9. Plaintiff timely filed a "Charge of Discrimination" with the Nevada Equal Rights  
25 Commission ("NERC") and Equal Employment Opportunity Commission ("EEOC") and was  
26 issued a Notice of Right to Sue by the EEOC on February 5, 2019, a copy of which is attached to  
27 Complaint as Exhibit "A".  
28

**STATEMENT OF FACTS**

10. On or around September 20013 Plaintiff commenced her employment as a Table Games Supervisor and currently works at the Cosmopolitan in the same capacity. She continues to perform her job satisfactorily and is one of the only female employees working in her section.

11. On January 10, 2018 at approximately 1:15 a.m. on the casino floor at Table 46-3<sup>rd</sup> base side, Sherman, then of Seattle Seahawks Football Club and currently of the San Francisco 49ers Football Club, harassed and repeatedly verbally assaulted Hale, by among other things, yelling and screaming at her, berating her, using profanity towards her and others, making gender discriminatory comments to her and threatening her job.

12. Sherman had an issue with Hale not allowing him to bet over the table limit by giving money to his entourage (ie. people with him) to bet for him. Plaintiff was just following the casino policy of not allowing this to occur if the total he (and the people with him) was betting was over the table limit.

13. He told Hale if “she couldn’t handle this then they should get someone who could.” Plaintiff inferred that Sherman was saying if she couldn’t handle the situation because she was a woman that they should get a man to handle the situation.

14. This lasted for at least 15 to 25 minutes before Sherman left the casino on his own accord. During this time no one including the shift manager David Bentley said anything to Sherman to stop him from continuing his verbal assault on Plaintiff. Hale even had a couple of customers come up to her after the incident and comment that they were sorry she had to go through what she did and how improper Sherman’s conduct was towards her.

15. In addition during the same incident Sherman verbally abused another female employee, Pit Manager Xiao Duex, and Bentley or the Cosmopolitan again did nothing about it. Plaintiff feels that if it was a male employee Bentley and/or other managers would have come to that employee’s defense.

16. Although Sherman was briefly prevented from returning to the property after the vice president of table games reviewed the video of what occurred that night, this lasted only one day before he was told he could continue to frequent the casino like nothing ever happened.

1           17.     Sherman came back to the Cosmopolitan on February 6, 2018 when Hale was  
2 working and continued to harass Plaintiff based on her sex including berating her and  
3 antagonizing her by calling out her name.

4           18.     When Hale wouldn't allow Sherman (and anyone betting for him) to bet over the  
5 table limit, he starting screaming at Plaintiff "mother f\*\*ker, f\*\*k I'll have your job, you don't tell  
6 me what to do."

7           19.     Plaintiff explained to him that his money is his bankroll regardless of who bets it  
8 for him. So whoever bets, it can't be over the table limit for each roll. He replied that Hale was  
9 wasting his time, asking her why is she doing this and then screaming out loud "Tonya is wasting  
10 my time." The shift manager Bentley again saw and heard the whole thing and did nothing about  
11 it.

12           20.     Some craps dealers even came up to Plaintiff after the incidents and said to Plaintiff  
13 that they can't believe David allowed this to happen to her.

14           21.     After these incidents occurred Hale reported it to the Director of Table Games  
15 Kellie Gorman, filed a charge of discrimination with the Nevada Equal Right Commission  
16 ("NERC") and retained an attorney to represent her in the matter. Her attorney sent a letter of  
17 representation to the Cosmopolitan on January 16, 2018. Thereafter until present Plaintiff has  
18 been retaliated against by Defendant, including but not limited to:

19                 a.     After reporting the incidents, Cosmopolitan almost completely removed Hale  
20 from craps, her regular game. Where prior to reporting the incidents Plaintiff worked craps four or  
21 five times a week, after she reported the incidents she was lucky to work craps once or twice a  
22 month;

23                 b.     Further, Defendant starting harassing Plaintiff about taking her Family  
24 Medical Leave ("FML") including accusing her of taking FML days on Fridays a lot and  
25 questioning whether these requests were legitimate. Cosmopolitan claimed Plaintiff called out a  
26 lot on FML and made her recertify her FML in April 2018 even though her prior FML  
27 certification should have been good until June 2018;  
28

1 c. In addition, Bentley has acted completely offish to Plaintiff since the  
2 incidents. Recently Bentley tried to intimidate Hale by standing about 10 feet away from her and  
3 stared at her to the point that one of the dealers in the area asked Hale what she did wrong to make  
4 him stare at her as he was doing. If she asks him a question, he completely ignores her.

5 d. Finally, Hale recently wanted to take personal leave to visit her elderly  
6 mother out of town who recently had an aneurysm and even though Defendant eventually let her  
7 use her personal leave for the visit, they originally were forcing her to use her FML.

8 **FIRST CAUSE OF ACTION**

9 **(For Sex/Gender Discrimination in Violation**  
10 **of Title VII against Cosmopolitan)**

11 22. Plaintiff Hale incorporates the allegation set forth in paragraphs 1 through 21,  
12 inclusive, as if fully set forth herein.

13 23. This cause of action is brought pursuant to Title VII to obtain relief for Plaintiff for  
14 discriminating against her in the terms, conditions or privileges of her employment because of her  
15 sex/gender Discrimination in violation of Title VII.

16 24. As previously set forth herein above, Hale was discriminated against because of her  
17 sex/gender (female) in violation of Title VII. This including treating female employees different  
18 than male employees in the terms, conditions or privileges of their employment.

19 25. As a direct, foreseeable, and legal result of this discrimination because of her  
20 sex/gender, Plaintiff has suffered, overall economic losses in earnings, bonuses, job benefits and  
21 expenses, in an amount to be proven at trial which exceeds the minimum jurisdictional limits of  
22 this Court.

23 26. As a further direct, foreseeable, and legal result of this discrimination because of  
24 her sex/gender, Plaintiff has suffered indignity, mental anguish, humiliation, emotional distress,  
25 nervousness, tension, anxiety, recurring nightmares, depression, inconvenience and loss of  
26 enjoyment of life and other pecuniary losses, the extent of which is not fully known at this time,  
27 for which she seeks damages in an amount in excess of the minimum jurisdictional limits of the  
28

1 Court, also to be proven at the time of trial.

2 27. In acting as they did, Defendant knowingly, willfully, and intentionally acted in  
3 conscious disregard of Plaintiff's rights. Their conduct was despicable, has subjected Plaintiff to  
4 oppression, and it warrants an award of punitive and exemplary damages in favor of Plaintiff, in a  
5 sum according to proof at trial.

6 28. Plaintiff claims the damages alleged herein, together with prejudgment interest as  
7 provided by law, in a sum according to proof at trial.

8 29. Plaintiff has incurred, and continues to incur, attorney's fees in the prosecution of  
9 his claims. Plaintiff therefore seeks an award of reasonable attorney's fees, in a sum according to  
10 proof at trial.

11 **SECOND CAUSE OF ACTION**

12 **(Hostile Environment Sexual Harassment in Violation**  
13 **of Title VII against Cosmopolitan)**

14 30. Plaintiff Hale incorporates the allegations set forth in paragraphs 1 through 29,  
15 inclusive, as if fully set forth herein.

16 31. This cause of action is brought pursuant to Title VII as it involves a claim by  
17 Plaintiff for "Hostile Environment" sexual harassment which is governed by Title VII.

18 32. As previously set forth herein above, Plaintiff was harassed because of her  
19 sex/gender (female) in violation of Title VII which created a "Hostile Environment" in the  
20 workplace for Hale.

21 33. This including allowing Defendant Sherman to harass Plaintiff because of her  
22 gender without doing anything about it.

23 34. By failing to take reasonable actions, Cosmopolitan breached their duty under the  
24 law to provide an environment free of sexually harassment.

25 35. As a direct, foreseeable, and legal result of the sexual harassment by Sherman and  
26 Cosmopolitan's failure to provide a work environment free of sexual harassment, Plaintiff has  
27 suffered crying attacks, embarrassment, feeling violated, having nightmares about the incident,  
28

1 being unable to sleep, indignity, mental anguish, humiliation, emotional distress, nervousness,  
2 tension, anxiety, recurring nightmares, depression, inconvenience and loss of enjoyment of life  
3 and other pecuniary losses, the extent of which is not fully known at this time, for which she seeks  
4 damages in an amount in excess of the minimum jurisdictional limits of the court, also to be  
5 proven at the time of trial.

6 36. In acting as they did, Cosmopolitan knowingly, willfully, and intentionally acted in  
7 conscious disregard of Plaintiff's rights. Their conduct was despicable, has subjected Plaintiff to  
8 oppression, and it warrants an award of punitive and exemplary damages in favor of Plaintiff, in a  
9 sum according to proof at trial.

10 37. Plaintiff claims the damages alleged herein, together with prejudgment interest as  
11 provided by law, in a sum according to proof at trial.

12 38. Plaintiff has incurred, and continues to incur, attorney's fees in the prosecution of  
13 her claims. Plaintiff therefore seeks an award of reasonable attorney's fees, in a sum according to  
14 proof at trial.

15  
16 **THIRD CAUSE OF ACTION**

17 **(Title VII of the Civil Rights Act of 1964 -**

18 **Retaliation against Cosmopolitan)**

19 39. Plaintiff Hale incorporates the allegation set forth in paragraphs 1 through 38,  
20 inclusive, as if fully set forth herein.

21 40. This cause of action is brought pursuant to Title VII as it involves a claim by  
22 Plaintiff for retaliation which is governed by Title VII.

23 41. As set forth herein above, Plaintiff was retaliated against, for reporting Sherman's  
24 conduct to Cosmopolitan, filing a charge with NERC and retaining an attorney. The retaliation  
25 has continued up to the present.

26 42. These action taken by Defendant Cosmopolitan against Plaintiff as discussed above  
27 were as a direct result and in direct retaliation of Hale reporting the conduct of Sherman to  
28 Cosmopolitan, filing a charge with NERC and retaining an attorney.





1           50. Plaintiff Hale is entitled to a safe and productive work environment free of  
2 harassment. As her employer, Cosmopolitan has a duty to hire, train, employ, supervise, manage  
3 and retain managerial and supervisory employees who are fit for those positions

4           51. Cosmopolitan breached these duties by failing to properly hire, train, employ,  
5 supervise, manage and retain managerial and supervisory employees including but not limited to  
6 shift manager Bentley.

7           52. As set forth above, Bentley allowed Defendant Sherman to harass Plaintiff because  
8 of her gender without doing anything about it.

9           53. By failing to take reasonable actions, Cosmopolitan breached their duty under the  
10 law to provide a productive work environment free of harassment.

11           54. As a direct, foreseeable, and legal result of this failing to provide an environment  
12 free of harassment, Plaintiff has suffered, overall economic losses in earnings, bonuses, job  
13 benefits and expenses, in an amount to be proven at trial which exceeds the minimum  
14 jurisdictional limits of this Court.

15           55. As further direct, foreseeable, and legal result of failing to provide an environment  
16 free of harassment, Plaintiff has suffered crying attacks, embarrassment, feeling violated, having  
17 nightmares about the incident, being unable to sleep, indignity, mental anguish, humiliation,  
18 emotional distress, nervousness, tension, anxiety, recurring nightmares, depression, inconvenience  
19 and loss of enjoyment of life and other pecuniary losses, the extent of which is not fully known at  
20 this time, for which she seeks damages in an amount in excess of the minimum jurisdictional  
21 limits of the court, also to be proven at the time of trial.

22           56. In acting as they did, Cosmopolitan knowingly, willfully, and intentionally acted in  
23 conscious disregard of Plaintiff's rights. Their conduct was despicable, has subjected Plaintiff to  
24 oppression, and it warrants an award of punitive and exemplary damages in favor of Plaintiff, in a  
25 sum according to proof at trial.

26           57. Plaintiff claims the damages alleged herein, together with prejudgment interest as  
27 provided by law, in a sum according to proof at trial.  
28

1           58. Plaintiff has incurred, and continues to incur, attorney's fees in the prosecution of  
2 her claims. Plaintiff therefore seeks an award of reasonable attorney's fees, in a sum according to  
3 proof at trial.

4                                   **FIFTH CAUSE OF ACTION**

5                                   **(Verbal Assault - against Sherman)**

6           59. Plaintiff Hale incorporates the allegation set forth in paragraphs 1 through 58,  
7 inclusive, as if fully set forth herein.

8           60. Defendant Sherman's actions as set forth above constituted a verbal assault under  
9 Nevada Law.

10          61. These actions by Sherman caused severe emotional distress to Plaintiff including  
11 but not limited to, crying attacks, embarrassment, feeling violated, having nightmares about the  
12 incident, being unable to sleep, indignity, humiliation, nervousness, tension, anxiety, recurring  
13 nightmares and depression, the extent of which is not fully known at this time, for which she seeks  
14 damages in an amount in excess of the minimum jurisdictional limits of the court, to be proven at  
15 the time of trial.

16          62. In acting as he did, Defendant Sherman knowingly, willfully, and intentionally  
17 acted in conscious disregard of Plaintiff's rights. Sherman's conduct was despicable, has subjected  
18 Plaintiff to oppression, and it warrants an award of punitive and exemplary damages in favor of  
19 Plaintiff, in a sum according to proof at trial.

20          63. Plaintiff claims the damages alleged herein, together with prejudgment interest as  
21 provided by law, in a sum according to proof at trial.

22          64. Plaintiff has incurred, and continues to incur, attorney's fees in the prosecution of  
23 her claims. Plaintiff therefore seeks an award of reasonable attorney's fees, in a sum according to  
24 proof at trial.

25                                   **SIXTH CAUSE OF ACTION**

26                                   **(Intentional Infliction of Emotional Distress -**  
27  
28                                   **against Cosmopolitan and Sherman)**



2. For compensatory damages for mental and emotional distress, worry, indignity, mental anxiety, mortification, depression, shame, grief, inconvenience and loss of enjoyment of life and other pecuniary losses, all to Plaintiff's damage in a sum to be shown at the time of trial;

3. For punitive damages;

4. For attorney's fees and costs in an amount determined by the court to be reasonable, pursuant to 42 USC §2000e-5(k);

5. For pre-judgment interest on all damages; and

6. For any other and further relief that the court considers proper.

Against Sherman:

7. For compensatory damages for mental and emotional distress, worry, indignity, mental anxiety, mortification, depression, shame, grief, inconvenience and loss of enjoyment of life, all to Plaintiff's damage in a sum to be shown at the time of trial;

8. For punitive damages;

9. For attorney's fees and costs in an amount determined by the court to be reasonable;

10. For pre-judgment interest on all damages; and

11. For any other and further relief that the Court considers proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury in this action.

DATED: 5/06/2019

LAW OFFICES OF MICHAEL P. BALABAN

BY: /s/ Michael P. Balaban  
Michael P. Balaban  
LAW OFFICES OF MICHAEL P. BALABAN  
10726 Del Rudini Street  
Las Vegas, NV 89141

# EXHIBIT

“A”

## NOTICE OF RIGHT TO SUE

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EEOC Form 161-B (11/16)

**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)**

To: **Tonya Hale**  
**P.O. Box 751474**  
**Las Vegas, NV 89136**

From: **Los Angeles District Office**  
**255 E. Temple St. 4th Floor**  
**Los Angeles, CA 90012**



On behalf of person(s) aggrieved whose identity is  
**CONFIDENTIAL (29 CFR §1601.7(a))**

EEOC Charge No.

EEOC Representative

Telephone No.

**34B-2018-00443**

**Karrie L. Maeda,**  
**State & Local Coordinator**

**(213) 894-1100**

(See also the additional information enclosed with this form.)

**NOTICE TO THE PERSON AGGRIEVED:**

**Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA):** This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA **must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)



More than 180 days have passed since the filing of this charge.



Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.



The EEOC is terminating its processing of this charge.



The EEOC will continue to process this charge.

**Age Discrimination in Employment Act (ADEA):** You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, **the paragraph marked below applies to your case:**



The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice**. Otherwise, your right to sue based on the above-numbered charge will be lost.



The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

**Equal Pay Act (EPA):** You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible**.

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission



**Rosa M. Viramontes,**  
**District Director**

**February 5, 2019**

(Date Mailed)

Enclosures(s)

CC: **Adriana Kasunic**  
**Senior Director of People Services**  
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**3708 Las Vegas Blvd. South**  
**Las Vegas, NV 89109**

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